

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR.

PLAINTIFF

VS.

CAUSE NO. 2021-612 (W)

ROBERT SULLIVANT, JR.

DEFENDANT

VS.

EVELYN STEVENS

THIRD PARTY DEFENDANT

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT ROBERT SULLIVANT, JR.'S MOTION TO STRIKE ALL TESTIMONY AND REPORTS OF DR. FRANK PERKINS OR, IN THE ALTERNATIVE, TO COMPEL HIS DEPOSITION BY COURT ORDER

COMES NOW Plaintiff, Robert Sullivant, Sr. ("Sullivant, Sr."), by and through undersigned counsel, and files his *Plaintiff's Response in Opposition to Defendant Robert Sullivant, Jr.'s Motion to Strike all Testimony and Reports of Dr. Frank Perkins or, in the Alternative, to Compel his Deposition by Court Order* against Defendant, Robert Sullivant, Jr. ("Sullivant, Jr."), and in support thereof would state as follows:

1. On January 10, 2023, the *Agreed Order for Independent Medical Exam* was filed appointing Dr. Frank Perkins to perform the IME on Sr.
2. On or about January 31, 2023, undersigned counsel received the Medical Affidavit of Dr. Perkins and forwarded the same to Jr.
3. On May 9, 2023, a hearing was held on Sr.'s *Request for Permission for Robert Sullivant, Sr. to Execute a Will* and his *Plaintiff's Motion to Appoint a Conservator*.
4. At the May 9, 2023 hearing, Jr. admitted that he had had Dr. Perkins' report for a while evidenced by the following conversation between Jr. and the Court:

HONORABLE ROBERT Q. WHITWELL: You've had his report; have you not?
MR. ROBERT SULLIVANT, JR.: I have his report right here.

HONORABLE ROBERT Q. WHITWELL: And you have had it for some time?

MR. ROBERT SULLIVANT, JR.: I have had it for some time

5. On March 2, 2023, undersigned counsel sent correspondence to Jr. stating he was not aware of Jr's request to depose Dr. Perkins and then explained Dr. Perkins' fees and costs for the deposition. See said correspondence attached hereto as Exhibit A.

6. On June 8, 2023, undersigned counsel happened to learn that Jr. previously issued a deposition subpoena for Dr. Perkins although he filed no notice with the Court and did not send notice of the filing to undersigned counsel. Undersigned counsel was notified of the deposition subpoena by Attorney Hale Freeland, who represents Dr. Perkins.

7. On June 30, 2023, undersigned counsel received Jr.'s *Motion to Strike all Testimony and Reports of Dr. Frank Perkins or, in the Alternative, to Compel his Deposition by Court Order*.

8. At the May 9, 2023 hearing, Dr. Perkins was called to testify and Jr. did not object to his testimony nor did he object to Dr. Perkins' report being made a part of the record on that same day as evidenced by the conversation below:

MR. SWAYZE ALFORD: And, Your Honor, I think Dr. Perkins -- I think his report is probably already in the court record, but I guess I will just out of an abundance of caution make it -- offer it as an exhibit.

HONORABLE ROBERT Q. WHITWELL: I have seen it, I think, in the attachments, but it's not a part of this record.

MR. SWAYZE ALFORD: I think I will just go ahead and make it --

HONORABLE ROBERT Q. WHITWELL: Any objection to it?

MR. ROBERT SULLIVANT, JR.: No, Your Honor.

HONORABLE ROBERT Q. WHITWELL: It will be marked as Exhibit 1 and admitted into evidence.

9. Additionally, at the May 9, 2023 hearing, undersigned counsel moved to offer Dr. Perkins as an expert in the specialty of psychiatry and, when asked by the Court, Jr. stated that he had no objections:

MR. SWAYZE ALFORD: All right. Your Honor, we would offer Dr. Perkins as an expert in his stated specialty of psychiatry.

HONORABLE ROBERT Q. WHITWELL: Any objection to that, Mr. Sullivant, Jr.?

MR. ROBERT SULLIVANT, JR.: I'm sorry, I was reading the report.

HONORABLE ROBERT Q. WHITWELL: All right. He's asked to offer him as a forensic psychiatrist and --

MR. ROBERT SULLIVANT, JR.: No, I have no objection to that.

HONORABLE ROBERT Q. WHITWELL: You have no objection to the stipulation of his qualifications?

MR. ROBERT SULLIVANT, JR.: No, I do not.

HONORABLE ROBERT Q. WHITWELL: All right. He will be -- Dr. Perkins will be stipulated as a board certified psychiatrist, a forensic psychiatrist.

10. In fact, Jr. did not make even one objection during Dr. Perkins' entire direct testimony nor his redirect testimony.

11. On May 17, 2023, the *Order of Appointment of Guardian and Conservator of an Adult* was filed with the Court appointing Sherry Wall as Sr.'s Conservator. On May 18, 2023, the *Order Granting Robert Sullivant, Sr.'s Request to Execute a Will* was filed with the Court.

12. Jr. did not file any post-trial motions or an appeal in reference to the entry of either of these Orders.

13. The deposition of Dr. Perkins is now moot as there are no issues before the Court regarding Dr. Perkins or his opinions about Sr.

14. Sr., nor undersigned counsel, have paid any fees to Dr. Perkins.

WHEREFORE PREMISES CONSIDERED, Robert Sullivant, Sr., respectfully move this Court to enter its order denying Robert Sullivant, Jr.'s *Motion to Strike all Testimony and Reports of Dr. Frank Perkins or, in the Alternative, to Compel his Deposition by Court Order* and requiring Robert Sullivant, Jr. to pay all attorney's fees and costs associated with defending this Motion. Robert Sullivant, Sr. further request such other relief to which he may be entitled.

RESPECTFULLY SUBMITTED this 10 day of July, 2023.

ROBERT SULLIVANT, SR., Plaintiff

BY: 
SWAYZE ALFORD (MSB #8642)
KAYLA WARE (MSB #104241)

OF COUNSEL:

SWAYZE ALFORD

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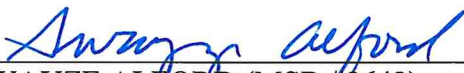
Counsel for Robert Sullivant, Sr.

CERTIFICATE OF SERVICE

I, Swayze Alford, attorney for Robert Sullivant Sr., do hereby certify that I have this day forwarded, via email, a true and correct copy of the above and foregoing *Plaintiff's Response in Opposition to Defendant Robert Sullivant, Jr.'s Motion to Strike all Testimony and Reports of Dr. Frank Perkins or, in the Alternative, to Compel his Deposition by Court Order* to the following:

Robert Sullivant, Jr.
robert@steelandbarn.com

SO CERTIFIED, this the 10 day of July, 2023.


SWAYZE ALFORD (MSB #8642)

Kayla Ware

From: Swayze Alford
Sent: Thursday, March 2, 2023 1:40 PM
To: Robert Sullivant
Cc: Lacey Whitaker
Subject: Dr. Perkins

Robert,

It is my understanding that you have contacted Dr. Perkins's office about taking his deposition. I was not aware of your desire to take his deposition. I think that we need to coordinate available dates for everyone in order to schedule a convenient time and date. Dr. Perkins charges \$600 an hour for his time to prep for and attend the deposition and \$200 an hour for travel. You will be responsible for the cost. Thanks.

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Exhibit
"A"